

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

|                           |   |              |
|---------------------------|---|--------------|
| UNITED STATES OF AMERICA, | ) |              |
|                           | ) |              |
| Plaintiff,                | ) | 4:09CR3091-2 |
|                           | ) |              |
| V.                        | ) |              |
|                           | ) |              |
| JOBITA WILLETТА AVERY,    | ) | MEMORANDUM   |
|                           | ) | AND ORDER    |
| Defendant.                | ) |              |
| _____                     | ) |              |

Jobita Willetta Avery seeks a reduction in her sentence because of the retroactive amendments to the “crack” Guidelines. I will deny the motion. After I sustained her counsel’s objection to drug quantity, Avery’s base offense level for one kilo of crack and 165 grams of powder cocaine was set at a level 34. (Transcript of Sentencing (filing no. 215 at CM/ECF p. 30.)) While the method that was used to calculate the quantity triggering a level 34 at the time of sentencing was different than the method used in the retroactive amendments, the result is the same. Either way, the base offense level would be 34. Because the retroactive amendments provide her with no relief,

IT IS ORDERED that:

1. The motion for sentence reduction (filing no. 258) and motion to appoint counsel (filing no. 259) are denied.
2. The Clerk shall provide a copy of this document to Mike Norton, Supervisory United States Probation Officer, to David Stickman, Federal Public Defender, to the prosecutor and to Ms. Avery.

DATED this 21<sup>st</sup> day of November, 2011.

BY THE COURT:

*Richard G. Kopf*

United States District Judge